IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Crl.L.P..No. 472 of 2007()

ST.174/2005 of J.M.F.C. - III, KOCHI
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PETITIONER/COMPLAINANT:

ICICI BANK LTD., EMGEE SQUARE,
NEAR PADMA JUNCTION, M.G.ROAD, ERNAKULAM,
REPRESENTED BY ITSL PRINCIPAL (LEGAL) OFFICER,
MR.BABU SREEJITH.

BY ADV. SRI.KKM.SHERIF
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS: IST RESPONDENT/ACCUSED IN ST 174/05:
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1. K.Y.MUHAMMED, KATTISSERY HOUSE,
AZHEEKODE, KODUNGALLOOR, THRISSUR-680731.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R2-BY P.P.SRI.C.M. KAMMAPPU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.472 OF 2007

Dated this the 17th day of July, 2007.

O R D E R

This is an application for special leave to appeal filed against the judgment in S.T.No.174/2005 on the file of the Judicial Magistrate of First Class -III, Kochi. The specific allegation in the complaint filed before the court was that the 1st respondent had taken a loan of Rs.1,80,000/= from the petitioner Bank on the assurance that the amount shall be repaid by instalments. Later it was found that Ext.P2 cheque issued by the 1st respondent has been dishonoured by the Bank on the ground of insufficiency of fund. On complying the provisions of notice, the complaint has been filed before the court. To prove the case against the 1st respondent, on the side of the petitioner PW1 was examined who was an authorised agent of the petitioner Bank. Exts.P1 to P7 were also produced. On closing the prosecution evidence, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the transactions which led to passing of Ext.P2 cheque, the 1st respondent had stated that he had though availed a loan from the Bank, at the time of availing of the loan, he had signed and

given 7 blank cheques to the petitioner Bank for recovery of the instalments. One of the cheques given by the 1st respondent for recovering the instalments is misused by the petitioner Bank for filing a complaint under Section 138 of the N.I.Act. To prove that case, the 1st respondent had also produced Exts.D1 to D7. After the trial, the trial court found that PW1 could not prove the transaction between the petitioner and the 1st respondent which led to passing of Ext.P2 cheque and this witness was not knowing about the transactions. The trial court found that the case set up by the 1st respondent is correct and the cheque in question was issued in connection with return of the instalments and not for any other purposes. In the above circumstances, the trial court acquitted the accused. The trial court also found that even though PW1 represented before the court as the authorised authority to file complaint for and on behalf of the petitioner bank, there was no document produced to prove his authority except production of a photocopy of the power of attorney deed. Apart from the above defect, the trial court also found that the petitioner Bank had already initiated steps against the 1st respondent at Chennai Branch of the Bank also. Considering all these aspects and the case set up by the 1st respondent, the trial court found that the petitioner failed to

prove the case against the 1st respondent. In the above circumstances, after considering the entire evidence, this Court is of the view that the judgment of the trial court requires no interference.

Accordingly, special leave to appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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